IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No.218/2003

Judgment delivered on: October 03, 2007

Deepak Kumar ..... Appellant
Through: Mr.J.S. Kanwar, Advocate

versus

Sunil & Ors. ..... Respondent
Through: Ms.A. Sangeeta, Advocate for respondent No.3.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Not necessary

2. To be referred to Reporter or not? Not necessary

3. Whether the judgment should be reported in the Digest? Not necessary

KAILASH GAMBHIR, J. Oral:

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By way of the present appeal, the appellant is seeking enhancement in the compensation. Mr.J.S. Kanwar, counsel appearing for the appellant states that meagre amount of Rs.5,000/- has been awarded in favour of the appellant who had received some serious injuries i.e. fracture on his left leg and 8

ribs but the Tribunal ignoring the said nature of injuries has awarded a very small compensation in favour of the appellant. Counsel for the appellant further contends that one academic year of the appellant was lost due to injuries as he could not continue his studies in 9th standard. Counsel further contends that even the medical expenses were not taken into consideration by the Tribunal. Only a small amount of Rs.1,000/- has been awarded towards treatment, medicine and conveyance etc.

Per contra, counsel for the respondent contends that the nature of injuries as being alleged by the appellant are not supported by the medical records were placed by the appellant. The MLC proved that the nature of injuries were simple in nature and not one as have been alleged by the appellant. Counsel has invited my attention to Para 17 of the impugned award where the Tribunal has discussed this aspect of the alleged injuries not supported by the MLC on record.

I have heard learned counsel for the parties at length and have perused the records. In Para 17 of the judgment, the Tribunal has observed that the perusal of MLC, Ex.P11 indicates that the nature of injuries described by the doctors concerned has been certified as simple. The Court has also observed that EX.P11

being the first medical examination of the petitioner after the accident, more reliance should be placed on the said document and not on the oral plea of the claimant dealing with a different kind of injury. The Tribunal has also referred to the x-ray report which was exhibited as Ex.P15 and came to the conclusion that the x-ray report does not re-concile with the nature of the injuries certified on the MLC. In the absence of any evidence proving the said injuries of fracture of left leg and 8 ribs, the Tribunal also did not rely upon the bills produced by the appellant in support of his injuries, although a sum of Rs.1,000/- has been awarded by the Tribunal towards treatment, medicine and conveyance etc. Since admittedly in the present case, the present appellant has suffered only a simple injury, therefore, the Tribunal did not feel convinced to award any higher amount of compensation as claimed by the appellant in the claim petition. It is no doubt true that the appellant in his deposition has stated that he lost one academic year due to the injuries sustained by him and this aspect has been totally ignored by the Tribunal. As per the settled law, the compensation which has to be passed in the facts and circumstances of the case has to be just and fair.

The judgment of Supreme Court in **Nagappa v.**

Gurudayal Singh, *(2003) 2 SCC 274* is relevant in this regard. The relevant para of the same is reproduced below:-

> **"7.** Firstly, under the provisions of the Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is — it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence."

Since the Tribunal has not considered that aspect of loss of one academic year, therefore taking the said aspect into consideration, I enhance the award from Rs.5,000/- to Rs.9,000/- with interest from the date of filing of the appeal.

With the above discussion, the appeal is disposed of.

October 03, 2007 **KAILASH GAMBHIR, J.**
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